

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 12-11424-GAO

JOSHUA GOLDMAN and CARRIE GOLDMAN,  
Plaintiffs,

v.

BANK OF AMERICA, N.A.,  
Defendant.

OPINION AND ORDER

July 8, 2013

O'TOOLE, D.J.

This action arises out of a dispute between the plaintiffs and the defendant, mortgagee Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP.

The Complaint asserts eleven claims: (1) trespass; (2) conversion; (3) negligence; (4) negligent hiring, training, and supervision; (5) intentional infliction of emotional distress; (6) invasion of privacy; (7) breach of contract; (8) breach of the duty of good faith and fair dealing; (9) unfair and deceptive acts in violation of M.G.L. c. 93A; (10) violation of the Federal Debt Collection Act, 15 U.S.C. §§ 1692(f)(6)(A); and (11) violation of the Massachusetts Civil Rights Act. The defendants move to dismiss Count 1 and Counts 3 through 11.

After review of the Complaint and the relevant motion papers, I conclude that the plaintiffs have adequately alleged facts which, if ultimately proven, could establish the defendant's liability under the various legal theories asserted, with one exception.

The plaintiffs' claim that the defendant violated the FDCPA must be dismissed. The defendant is not covered by the FDCPA. "The legislative history of [15 U.S.C.] section 1692a(6) indicates conclusively that a debt collector does not include the consumer's creditors, a mortgage

servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned.” Perry v. Stewart Title Co., 756 F.2d 1197, 1208 (5th Cir. 1985). According to the plaintiffs’ own allegations, when the defendant acquired the mortgage, it was not in default. Therefore, the defendant is in the position of the original mortgagee, and thus not a debt collector under the FDCPA. See Schlosser v. Fairbanks Capital Corp., 323 F.3d 534, 536 (7th Cir. 2003).

For the reasons stated herein, the defendants’ Motion to Dismiss (dkt. no. 9) is GRANTED as to Count 10 only, and DENIED as to all other Counts.

It is SO ORDERED.

/s/ George A. O’Toole, Jr.  
United States District Judge